IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
MONDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO: 2039 of 1999

Between:

M/s Vulcan Distilleries Pvt. ltd rep by Managing Director Sadanand Dattatreya BApat,
Verma Chambers , 11 Homji Street , Fort,
Mumbai, Maharastra state.

... PETITIONER

AND

1 Govt. of A.P rep by Secretary
Revenue Department , Secretariat A.P. ,
Hyderabad.
2 Commissioner of Prohibition & Excise , A.P. ,
Nampally, Hyderabad.
3 Prohibition & Excise Supdt.. Krishna Dist,
Machilipatnam.
4 Special Judicial First Class Magistrate for Prohibition & Excise
Machilipatnam,
Krishna Dist.

...RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the respondents in not discharging their statutory obligation u/s 47(2) of the A.P Excise Act to withdraw the CC No.925 of 96 and CCNo.1085/96 on the file of the 4th respondent in view of the payment of compounding fee as per the proceedings of the 2nd respondent as illegal, arbitrary and violative of provisions of the A.P Excise Act,1968 and contrary to the judgement of this Hon'ble court and consequently quash the CC No.925/96 and 1085/96 on the file of the 4th respondent.

For the Petitioner: MR.T.RAGHUNATH REDDY

For the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

ORDER:

Two consignments vide Lorry Nos.ABK 9021 and ABG 9689 of Beehive Brandy of 630 cases each were despatched by the petitioner for reaching the State of Meghalaya for sale in that State.

The said trucks were seized on 21-11-1990 and on 22-11-1990 by the Excise Authorities, Vijayawada Range including the stock from the lorries along with import and export permits in original and other connected documents, as the petitioner failed to obtain "Through Transport Permit" from the State of Andhra Pradesh for passing the trucks through the State of Andhra Pradesh. The petitioner-company made a representation on 30-11-1990 to compound the offence since they are not aware of the Excise Rules of the State of Andhra Pradesh, which requires obtaining "Through Transport Permit". The second respondent forwarded the said application to the Commissioner of Excise, who is empowered under Section 47 A (2) of the Excise Act to compound the offence booked under Section 34 (a) of A.P. Excise Act. The Commissioner of Excise compounded the offence booked in Crime No.5/90-1 and 6/90-1 for a sum of Rs.25,000/- (Rupees twenty five thousand only) each and also ordered to release the seized stock on payment of value of goods of Rs.3,48,000/- (Rupees three lakh forty eight thousand only). On passing such order, the petitioner filed W.P.No.1948 of 1991 challenging the Rules issued under G.O.Ms.No.983, Revenue (Excise.III) Department, dated 06-10-

1989, which requires obtaining “Through Transport Permit” and obtained release of seized stocks on furnishing Bank Guarantee. At the disposal of the Writ petitions, the petitioner filed W.A.No.1385 of 1995, which was also dismissed on 11-03-1996. Consequent on the dismissal of the Writ Appeal, the petitioner made a representation to permit him to pay compounding fee in view of the disposal of the said cases. On such representation, the Commissioner, by proceedings Cr.No.3726/90.DPE/C1, ordered for payment of the compounding fee as well as the value of seized stock, i.e., Rs.25,000/- (Rupees twenty five thousand only) each and Rs.3,48,000/- (Rupees three lakh forty thousand only) with regard to the value of the goods as per the earlier order passed on 02-02-1991. The petitioner paid the compounding fee of Rs.25,000/- (Rupees twenty five thousand only) each and made a representation for encashment of the bank guarantee furnished by him for release of the stocks.

Meanwhile, the petitioner was charge sheeted for the Crime registered in the year 1991 in Crime No.5/90-91 and Crime No.6/90-91 in C.C.No.925 of 1996 on the file of the fourth respondent for contraventions under the Excise Act depositing seized stocks with Magistrate Court. The said stocks were released to petitioner on 22-03-1991. As the lorries were not released petitioner filed W.P.No.4400 of 1991 and obtained orders for release of vehicles in W.P.M.P.No.5437 of 1991 on 26-03-1991. Questioning the said prosecution, present Writ Petition is filed contending that once the Excise Commissioner compounded the offence, prosecution cannot be proceeded with and the same has to be quashed.

Section 47 (2) of the A.P. Excise Act as it stood at the date

of seizure, reads as under:

> " On the payment by the person, the sum of money or the value or both, as the case may be, [in accordance with the provisions of sub-section (1) or Section 47-A] such person, if in custody shall be set at liberty, and all the properly seized may be released and no proceedings shall be [instituted or continued] against such person in any criminal court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case any further proceedings be taken against such person or property with reference to same act".

This Court in 1984 (1) APLJ Page 215, 1988 (1) ALD, page 215 and 1998, ALD page 16 categorically held, once the offence is compounded it gets abated and it will amount to acquittal.

Learned Government Pleader, on instructions, now submits that pursuant to the request made by the petitioner, the bank guarantee furnished was encashed by the department, in effect, the value of the stocks which were ordered to be released have been realized apart from the deposit of the compounding fee.

In view of the same, the petitioner is entitled to acquittal and the proceedings in C.C.No.925 of 1996 and C.C.No.1085 of 1996, which are now transferred to the III Metropolitan Magistrate and re-numbered as C.C.No.1242 of 2000 and C.C.No.1313 of 2000 cannot be proceeded with and the same are accordingly quashed. Petitioner is accordingly acquitted of the charges.

The Writ Petition is accordingly allowed. No costs.

(A. GOPAL REDDY, J)

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the twenty-eighth day of June Two thousand and four.

June 28, 2004
MRR
Copy to:

1 Secretary, Revenue Department , Secretariat A.P. ,
Hyderabad.
2 Commissioner of Prohibition & Excise , A.P. ,
Nampally, Hyderabad.
3 Prohibition & Excise Supdt.. Krishna Dist,
Machilipatnam.
4 Special Judicial First Class Magistrate for Prohibition & Excise
Machilipatnam,
Krishna Dist.
5. Two C.Cs to the G.P for Prohibition and Excise, High Court Buildings,
Hyderabad (OUT)
6. Two C.D. Copies.